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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 8 ORIGINAL

THE STATE OF TEXAS,
Complainant,

against

THE STATE OF FLORIDA, *ET AL.*,
Respondents.

MEMORANDUM *RE* BILL OF COMPLAINT

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Statement.

In the bill of complaint there are five averments of major importance:

First, the averment that in each of the four States the appropriate authorities assert that that State was the domicile of the decedent and claim that a tax is payable to that State on the intangible property of the decedent, that that State has a lien upon all of the intangible property wherever situated, and that that State proposes to take all lawful steps to secure the enforcement of the lien and the payment of the tax.

Second, the averment that the claims of the four States are made in good faith.

Third, the averment that the property of the decedent situated in Texas is utterly insufficient to pay the amount of the tax claimed by the State of Texas.

Fourth, the averment that the taxes claimed by the States of Texas, Massachusetts, New York and Florida exceed in the aggregate the value of the total assets of the estate after the amount of the Federal estate tax payable to the United States is deducted. The precise figures are alleged in the bill and the computation of them is explained in appendices to the bill.

Fifth, the averment that on account of the foregoing an injury to the pecuniary or proprietary interests of the State of Texas in the intangible property of the estate is threatened.

These averments, and particularly the last three, clearly distinguish the bill from the bill which was sought to be filed in *New Jersey* v. *Pennsylvania*, 287 U. S. 508. There it did not appear that the State of New Jersey would be in any way injured by the collection of the tax which Pennsylvania was about to collect. It was not and could not be alleged either that the property in New Jersey, out of which New Jersey could collect the tax which it claimed, was insufficient or that the entire assets of the estate wherever situated were insufficient to permit the full collection of both the Pennsylvania tax and the New Jersey tax. As we understand it, this Court refused to permit New Jersey to file its bill because of the absence of these averments and because their absence compelled the inference that leave to file the bill was sought not in the interest of the State of New Jersey but in the interest of the estate and its beneficiaries. In our case these averments are made and the fact is that leave to file the bill was and is sought by the

State of Texas solely on its own initiative and in its own interest.

Perhaps nothing more than this is necessary to sustain the sufficiency of the bill. However, since the considerations which, in our opinion, entitle us to leave to file the bill have been greatly clarified since the preparation of our former briefs we think that it is proper that we should submit the following argument.

Argument.

I.

The series of cases in this Court which culminated in *First National Bank* v. *State of Maine*, 284 U. S. 312, lay down the constitutional principle that only one State may collect an inheritance tax upon the intangible property of the decedent and that that State is the one in which the decedent was domiciled at his death. They hold that the Fourteenth Amendment to the Constitution of the United States, which provides that no State may take property without due process of law, prohibits the imposition of an inheritance tax upon intangible property by any State other than that in which the decedent was domiciled. Thus, the determination of what State was the domicile of the decedent constitutes an adjudication that that State has jurisdiction to tax the intangible property of the decedent.

The constitutional principle that the State in which the decedent was domiciled has jurisdiction to tax the intangible property necessarily involves a recognition of the right of the State of the domicile to collect the tax out of intangible property the evidences of which are situated, and the rights represented by which are enforceable, in other States. Both the decision and opinion of this Court in *Milwaukee County* v. *M. E. White Company*, 296 U. S.

368, indicate that such extraterritorial enforcement will be permitted. If the State of the domicile did not have this right the privilege to tax would amount to nothing because avoidance of the tax would be a simple matter. The tax could certainly be avoided by anyone who owned intangible property consisting of rights enforceable in a foreign State and who kept the evidences of that property in that State and probably could be avoided by merely keeping the evidences of indebtedness outside of the State of the domicile of the owner.

These propositions have been laid down by this Court as a part of its recent development of a fair and orderly system of taxation as between the respective States. The underlying purpose, as we understand it, has been to secure fairness and orderliness in taxation, first, as between the States and citizens of the United States and, second, as between the separate States. It is essential to this purpose that there be a procedure whereby if more than one State claims to have been the domicile of the decedent the certainty of multiple litigation and the possibility of ultimate injustice, either to the taxpayer or to a State, may be eliminated. The State of Texas seeks leave to file its bill of complaint in the belief that in conceiving and developing the possibility of invoking the original jurisdiction of this Court before the commencement of litigation in the courts in the four States involved, it is not only serving the interests of the State of Texas in this particular situation but is also contributing to the further development of fairness and orderliness in inheritance taxation.

II.

The suit which the State of Texas seeks to bring is completely different from that which was sought to be brought

in *Iowa* v. *Slimmer*, 248 U. S. 115, or in *New Jersey* v. *Pennsylvania*, 287 U. S. 508.

In *Iowa* v. *Slimmer*, a decedent, who it was claimed by Iowa was domiciled there, had kept the evidences of his intangible property in Minnesota and had not paid the taxes which Iowa claimed had become due to it during his lifetime. Slimmer was appointed executor in Minnesota. Iowa asked leave to file a bill in which it was prayed that such an order be entered "as will insure the dismissal of the Minnesota probate proceedings, and the administration of the estate in Iowa" and that meanwhile an injunction restrain the prosecution of the Minnesota probate proceeding. This Court denied leave to file the bill, saying that the probate courts of Minnesota had jurisdiction over the property of the decedent which was there at the time of his death even if the decedent was domiciled in Iowa and concluded its opinion by saying at page 121:

> "The only effective relief sought is to enjoin the further administration of the estate of the deceased by the courts of Minnesota. It is clear that the State of Iowa is not entitled to such relief."

This is just what the State of Texas does *not* ask in its bill. It has no desire to interfere with any proceedings in any State in connection with the administration and distribution of the estate. It is not necessary to the granting of effective relief in the suit proposed by Texas that there should be any interference with any such proceedings. It is true that if this Court grants leave to file the bill there is a possibility that this suit will decide that for tax purposes the decedent was domiciled in Texas and that in a probate proceeding, say in New York, there will be a determination that the decedent was domiciled in New York. But this will produce no confusion and will not create

a real inconsistency. The possibility exists simply because in connection with the jurisdiction to tax the intangibles a constitutional question is involved which must be decided by this Court—either now or ultimately—and that in connection with the jurisdiction to administer and distribute the estate no constitutional question is involved, so that for that purpose domicile will be decided by the State courts. The question of domicile is a question of fact. It is no novelty in the administration of justice that when the same question of fact arises in different courts there will be different determinations and that seemingly inconsistent judgments dependent on that determination will be entered.

The State which this Court finds to be the domicile of the decedent will be entitled to collect a tax regardless of the decision of the State courts as to who is entitled to the estate on distribution. Conversely, the assets of the estate will be distributed by the courts which have jurisdiction over them in accordance with the determination of domicile by those courts, regardless of what State may be entitled to collect a tax. It may be that if the first final judgment should be obtained in this Court the finding of the fact of domicile would be *res adjudicata* as between the respondent Green and the respondent Wilks in the assertion of their respective claims to the estate in a State court. But even if that be so there would still be no interference with probate jurisdiction. The court having jurisdiction of the assets of the estate for purposes of distribution would still be free to distribute the property as it might see fit. It is true that probate courts generally distribute the property subject to their jurisdiction in accordance with the law of the domicile of the decedent, but they are under no legal obligation to do so and may distribute the property as they see fit. (*Iowa* v. *Slimmer*, 248 U. S. 115; *Baker* v. *Baker, Eccles & Company*, 242 U. S. 395.)

Turning to the case of *New Jersey* v. *Pennsylvania*, 287 U. S. 508, it will be remembered that we have already pointed out a fundamental distinction between the bill sought to be filed there and the bill which the State of Texas seeks leave to file (see page 2 of this memorandum). There are other important differences. New Jersey was asking this Court to restrain by injunction the collection by Pennsylvania of a tax which had been imposed after litigation which went to the highest court in Pennsylvania and in which this Court refused to review on certiorari the final judgment of the State courts. The State of Texas asks no injunction against any proceeding by any State. It asks only that this Court shall, in advance of litigation in the State courts, determine which one of the States is the one which under the Constitution may impose a tax. It justifies its request to this Court to make this determination, first, because under the Constitution this is the only Court in which the four claimant States may with perfect equality present their claims in a suit to which all of them are parties and, second, because a constitutional question being involved, this is the Court to which resort must ultimately be had to determine which of the four States has the right to impose the tax.

That this is the only court in which the four claimant States may with perfect equality present their claims in a suit to which all of them are parties is obvious. That this is the court to which resort must ultimately be had to determine which of the four States has the right to impose the tax may need some explanation. The explanation is that the Green Estate will not do what the Dorrance Estate did and fail to raise the constitutional question of the right of any given State to collect a tax upon the intangible property but will promptly and properly raise that question in the courts of each State which claims a tax. Thus, the ques-

tion of domicile ultimately will be presented to this Court for adjudication—not once but as many times as there may be States the highest courts of which have found the domicile of the decedent to have been within that State, for the request to review by certiorari must be made by the estate in each and every such instance.

III.

The judgment sought by the State of Texas will be a self-enforcing judgment. It will be a judgment that a designated State was the domicile of the decedent at his death, which is the equivalent of a judgment that that State has jurisdiction to impose an inheritance tax upon the intangible property of the decedent and that no other State has such jurisdiction. Such a judgment will be self-enforcing in just the same way that a judgment of this Court adjudicating the unconstitutionality of any threatened action by a State is self-enforcing. It will be self-enforcing in just the same way that a judgment of this Court which is entered on certiorari and which reverses the order of a State court imposing an inheritance tax upon the intangible property of the decedent Green—such reversal being based upon the ground that the decedent was not domiciled in that State—would be self-enforcing. It will be self-enforcing in just the same way that the judgments of this Court in the various boundary dispute cases decided by it have been self-enforcing. If any difficulty in the enforcement of the judgment is to be foreseen it is to be foreseen, we assume, upon the ground that the parties are sovereign States. But the same difficulty would always be foreseeable in any suit in this Court between States, and if the foreseeing of it be a proper basis for refusing jurisdiction in this case it would be a reason for refusing jurisdiction in all cases between States.

The analogy of the boundary dispute cases deserves consideration. *Iowa* v. *Illinois*, 147 U. S. 1, was a typical boundary case. In that case the course of the Mississippi River had changed and the question was the extent of the jurisdiction of the States of Iowa and Illinois to police and tax the bridges across the river. One of the allegations in the bill was that the corporation which owned one of the bridges complained of the double taxation to which it was subjected. This Court said that the respective jurisdictions of the States depended upon the location of the middle of the main navigable channel of the river. It "ordered, adjudged and declared that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River". It further ordered

> "that a commission be appointed to ascertain and designate * * * the boundary line between the two States, such commission, * * * to be required to make the proper examination and to delineate on maps prepared for that purpose the true line as determined by this court, and report the same to the court for its further action."

The final judgment entered some years later was entered on stipulation of counsel and was merely to the effect that the boundary line was the middle of the main navigable channel of the Mississippi River.

Georgia v. *South Carolina*, 257 U. S. 516, is another typical boundary case. There the question for determination was whether the State of Georgia or the State of South Carolina had jurisdiction over certain areas of land most of which consisted of islands in the boundary rivers. It appeared that the taxation of dams and hydroelectric plants in the boundary rivers rendered "the decision of

the questions involved of importance to the two states". The Court, after stating its conclusions with respect to the boundary line and the respective jurisdictions of the two States, gave its judgment that

> "Counsel may present a decree, within thirty days, to carry into effect these conclusions of the court, with or without a commission to locate and monument the boundary line, as they may be advised. The costs of suit will be equally divided between the two states." (257 U. S. 523.)

The final decree is given in full in 259 U. S. 572. It stated:

> "It is ordered, adjudged, and decreed that the boundary between the States of Georgia and South Carolina is and shall be the rivers Savannah, Tugaloo and Chattooga to the point where the latter river touches the North Carolina line at the thirty-fifth parallel of North latitude; and the location of the boundary line between said States is hereby established and declared to be as set forth in the opinion of the court as follows: * * *"

Then followed four specific statements about the location of the boundary and the final statement:

> "It is further ordered, adjudged, and decreed that the costs of this suit shall be equally divided between the said two States and that the Clerk of this court shall forthwith transmit to the Chief Magistrates of the States of Georgia and South Carolina copies of this decree, duly authenticated under the seal of the court."

In these and other cases this Court did not question its jurisdiction to adjudicate the controversies presented and apparently was not troubled by any question of the enforceability of the judgments which it entered. Yet, it is clear that the controversies and the judgments were identical in their

nature to the controversy sought to be presented in this case and the nature of the judgment prayed for. In the boundary dispute cases the issue was which of the two States had jurisdiction over certain land or things pursuant to which it might levy taxes and exert its police power. The controversy sought to be presented in the present instance is which one of the four States has jurisdiction to impose an inheritance tax upon certain identifiable items of intangible property. In the boundary dispute cases the determination of the controversy was dependent upon a question of fact which, under the usual practice, is referable to a Master. In our case the determination of the controversy is dependent upon the question of fact of the domicile of the decedent which is referable to a Master. In the boundary dispute cases the judgment was not that a State recover a certain amount of money or land or things. The judgment was that certain land or things are subject to the jurisdiction of one or the other of the claimant States. The judgment sought in the suit now proposed is in all legal respects identical. It is that certain identifiable items of intangible property are subject to the jurisdiction of one of the four States to impose an inheritance tax. In the boundary dispute cases there was the same opportunity that exists here to argue that the real dispute is not between the claimant States, but is between each separate claimant State and the individuals who own the property jurisdiction over which is in dispute. In some of those cases that argument was made. In all of them the fallacy of such an argument was recognized by this Court. In the boundary cases it is admitted that there is a dispute between each separate State and the individual taxpayers, but it is recognized that that is no reason why the Court, when its original jurisdiction is invoked, should not take jurisdiction to adjudicate the fundamental issue of which State it is that has jurisdiction and by such

adjudication eliminate both the controversy between the States and the controversies between each separate State and the individual taxpayers in the disputed territory. Indeed, if we read the cases correctly, the existence of issues between each separate State and the taxpayers was one of the reasons why this Court took jurisdiction. It would seem that the same line of reasoning should apply in the present instance. The proposed suit offers an opportunity conclusively to adjudicate the question of domicile for tax purposes and thereby not only to adjudicate the controversy between the States in a suit in which all of them are parties, but also to eliminate the necessity for litigation between each separate State and the estate.

IV.

Texas does not base its request for judgment upon the Declaratory Judgments Act or in any way rely upon that statute. Indeed, the judgment prayed for is not a declaratory judgment in the strict sense. It is a judgment in a suit between States and as we have seen, it is inherent in the nature of many of these suits that the appropriate judgment is not for money or an injunction. The judgment takes the form which the nature of the issue between the States calls for. If, for example, the issue is which of two States has jurisdiction over certain disputed territory, the appropriate form for the judgment to take is that the boundary line between the two States lies in a designated course, for that will automatically settle the question of jurisdiction. So, in the present instance, the form of the judgment prayed for seems appropriate. The judgment prayed for is a determination of the domicile of the decedent, for that will automatically settle the question of the jurisdiction to tax the intangible property of the decedent. The determination

of the question of fact of the domicile of the decedent in our case is the equivalent of the adjudication of the location of the boundary line in the boundary cases. *It is not too much to say that the determination of the domicile of the decedent is the determination of the boundary line of the jurisdiction to tax the intangible property of the decedent.*

The judgment prayed for by the State of Texas is no more objectionable on the ground that it is merely declaratory than were the judgments entered in many of the boundary dispute cases. As Mr. Justice Stone said in *Nashville C. & St. Louis Railway Co.* v. *Wallace*, 288 U. S. 249, at page 263:

> "While the ordinary course of judicial procedure results in a judgment requiring an award of process or execution to carry it into effect, such relief is not an indispensable adjunct to the exercise of the judicial function. *Fidelity National Bank* v. *Swope*, *supra*, 1932. This Court has often exerted its judicial power to adjudicate boundaries between states although it gave no injunction or other relief beyond the determination of the legal rights which were the subject of controversy between the parties, * * *."

If any justification of the entry of such a judgment as is entered in boundary dispute cases and as is sought here be necessary, it is to be found in the nature of the original jurisdiction of the Supreme Court to determine controversies between States. As long ago as 1799, Mr. Justice Washington said in a boundary dispute case, *Fowler* v. *Lindsey*, 3 Dallas, 411, 413:

> "I will not say, that a State could sue at law for such an incorporeal right, as that of sovereignty and jurisdiction; but even if a Court of law would not afford a remedy, I can see no reason why a remedy should not be obtained in a Court of Equity. The State of

> *New York* might, I think, file a bill against the State of *Connecticut*, praying to be quieted as to the boundaries of the disputed territory; and this Court, in order to effectuate justice, might appoint commissioners to ascertain and report those boundaries."

In *Haas* v. *Louisiana*, 134 U. S. 1, Mr. Justice BRADLEY said, at page 15:

> "Some things, undoubtedly, were made justiciable [by the Constitution] which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution."

In *Missouri* v. *Illinois and the Sanitary District of Chicago*, 180 U. S. 208, which was a suit by the State of Missouri to restrain action by the Sanitary District of Chicago, acting under authority derived from the State of Illinois, on the ground that it constituted a nuisance dangerous to the health of the people of Missouri, Mr. Justice SHIRAS said, at page 240:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a State. But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and, indeed, impossible, for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court.
>
> An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights be-

> longing to the complainant State. But it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering."

See, also, *Georgia* v. *Tennessee Copper Company*, 206 U. S. 230.

Accordingly, it seems unnecessary and inappropriate to burden the Court with an extended appraisal of the sufficiency of the proposed bill as against the tests so carefully laid down in *Aetna Life Insurance Co.* v. *Haworth*, decided at this term. It may be worth while, however, to demonstrate that the proposed bill squarely meets the general and ultimate test required by that case, namely, whether the issue is one "that is appropriate for judicial determination." The only possible suggestion to the contrary is that at this time there is something hypothetical, abstract, academic or moot about the controversy. But there is not. Nothing in the nature of an advisory opinion is sought. All of the facts which go to make a controversy between adversary parties now exist. The decedent has lived his life and the way in which he lived it has raised the issue as to the State of his domicile. The decedent has died. Each of four States in good faith claims that the decedent was domiciled within its borders, and that therefore it is entitled to impose an inheritance tax upon the intangible property of the decedent. One of these States asks leave to bring the others into this Court in order that the question